

shall have issued against him, it shall not thereby abate, but the same shall be carried on to judgment, sale and distribution, as if such death had not happened.

Not abated by death.

CHAP. LXIX.—An Act to amend "An Act concerning the writ of Attachment."

SEC. 1. A writ of attachment may be issued as the first process in personal actions, in the cases following, and no others: First, when the defendant is not a resident of the Territory; Second, when the defendant has departed, or is about to depart from the Territory, with intent to abscond; and Third, when the defendant is about fraudulently to remove, convey or dispose of his property, so as to hinder or delay the creditor or creditors suing out such writ.

When writ may issue.

SEC. 2. To authorize the issuing an attachment in any case, the defendant must be indebted to the plaintiff in a cause of action arising out of, founded upon or sounding in contract, or upon the judgment or decree of some court of law or chancery.

Cause of action, on what founded.

SEC. 3. The facts necessary to entitle a party to a writ of attachment shall be proven to the satisfaction of a district judge, or of a supreme court commissioner of the proper county, by the affidavit of the plaintiff or some credible witness, stating therein the nature and amount of the plaintiff's demand, and the circumstances upon which the belief of such facts is founded; and such officer shall endorse the fact of his satisfaction on the affidavit, which shall be filed with the clerk of the court before the writ shall issue.

Oath or affidavit of some person.

SEC. 4. It shall be competent for the defendant to traverse the affidavit, and to prove by testimony taken in pursuance of the rules of court, the falsity of the allegations upon which the writ issued. And if the court shall find that the said allegations are false, the property attached shall be released: *Provided*, That nothing herein shall impair any right of a plea in abatement of the writ, which the party may have, and of the trial by jury of the facts stated in such plea, according to the course of the common law.

Affidavit may be traversed.

Plea in abatement.

SEC. 5. The writ of attachment shall command the officer to attach the goods and chattels, lands and tenements, moneys, rights and credits, of the debtor; and also to summon the defendant, if to be found in his county, to answer the plaintiff in the action: *Provided*, That the same property which would be exempt by law from execution, shall be exempt from attachment.

What to attach.

What exempt.

SEC. 6. The service of such writ shall be made by attaching the property of the defendant, and by delivering to him, if to be found, a copy of the writ; and the officer serving the same shall return a true inventory and appraisalment of all the property attached, and the fact whether the defendant was summoned or not.

Service how made.

SEC. 7. In case of personal service of the writ upon the defendant, it shall not be necessary to call the defendant and have his default entered, but the suit shall proceed as in ordinary case of summons, and no notice shall be required to be published, as provided by the third section of the act of which this is amendatory. In every other case the suit shall be proceeded in according to the several provisions of said act.

Personal service, defendant not called.

SEC. 8. If real estate is attached by virtue of any writ of at-

Real estate.

- Record, return of officer.** attachment, the officer, on service thereof, shall make a certified copy of said writ, and of his return thereon, which shall be filed and recorded in the book of mortgages, in the register's office of the county in which such real estate is situated; and from the time of filing as aforesaid, the same shall be and continue a lien on all real estate mentioned or described in the return of the officer in such county, until the same shall be discharged. And when said lien shall be discharged by the order of said court, or by satisfaction of the judgment rendered in the suit, it shall be the duty of the said register, when requested, to record the satisfaction piece or transcript of the record of such order, in the book of mortgages, and to enter on the margin of the page or pages where the said writ and return are so recorded, a minute of such discharge or satisfaction.
- Shall be a lien.**
- Duty of Register.**
- Sections repealed.** SEC. 9.\* The first and second sections of the act of which this act is amendatory are hereby repealed.  
\* Sections 1 and 2 here referred to, are not herein contained.

CHAP. LXX.—An Act to repeal an act entitled “An Act concerning the lien of mechanics and others for the costs of repairs and improvements on real estate.”

- Building liable for work, etc.** SEC. 1. That all and every dwelling-house or other building hereafter constructed and erected within the Territory of Wisconsin, [Minnesota,] shall be subject to the payment of the debts contracted for, or by reason of any work done, or materials found, and provided by any brick maker, brick layer, stone cutter, mason, lime merchant, carpenter, painter and glazier, iron monger, plasterer and lumber merchant, or any other persons employed in erecting or furnishing materials for and in the erection and construction of such house or other building, before any other lien which originated subsequent to the commencement of such house or other building.
- When to file lien.** SEC. 2. That if such dwelling-house or other building, or any portion thereof, shall have been constructed under contract or contracts entered into by the owner thereof, or his or her agent, with any person or persons, no person, who may have done work for such contractor or contractors, or furnished materials for him or them, on his or their order or authority, shall have or possess any lien on said house or other building, for work done or materials so furnished, unless the person or persons so employed by such contractor to do work or furnish materials for such building, shall, within thirty days after being so employed to work, or having furnished materials as aforesaid, give notice in writing to the owner or owners of such building, or to his or their agents, that he or they are so employed to work or to furnish, or have furnished materials, and that they claim the benefit of the lien granted by this act.
- Contractor liable to sub-contractor.** SEC. 3. That no claim of any sub-contractor shall be a lien under this act, except so far as the owner may be indebted to the contractor at the time of giving notice of such claim as aforesaid, or may become indebted afterwards to him as such contractor.
- Limitation of lien.** SEC. 4. That no such debt for work and material shall remain a lien upon such lands, houses or other buildings, longer than one year from the time of furnishing of materials or the performance of the labor, unless an action for the recovery of the same be instituted within the same time.